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Inventor: Fasnacht

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REMARKS

Applicant appreciates the attention of the Examiner to the application. The Office Action of the Examiner of February 14, 2005 has been reviewed with care in the preparation of this response. The amendment above and the following remarks are believed to be fully responsive to this action.

Status of Claims

Claims 1-20 and 27-45 are pending. Claims 1-20 and 33 have been allowed. The claims in the above amendment set forth a novel and non-obvious spinnerbait fishing lure. Allowance of claims 27-32 and 35-46 as presented is respectfully requested in view of the following remarks.

Applicant thanks the Examiner for the telephonic interview with counsel on May 3, 2005, and his follow-up discussion with counsel on May 5, 2005 and May 12, 2005. In response to these discussions regarding the amending of certain pending claims and in particular of claim 39, Applicant has prepared this Response and believes that the Response, with both the above amendment and the following remarks and argument, traverses all rejections in the Office Action and places all claims in condition for allowance.

Claims 34, 35 and 39 were rejected as being anticipated under 35 U.S.C. §102(b) by Ogle (U.S. Patent No. 5,253,446). Claims 36-38, 40 and 41 were rejected as being unpatentable under 35 U.S.C. §103(a) over Ogle or Link (U.S. Patent No. 6,601,336) as applied to claims 35 or 39 and further in view of Smith (U.S. Patent No. 4,640,040). Claims 44 and 45 were rejected as being unpatentable under 35 U.S.C. §103(a) over Ogle as applied to claim 39 and further in view of Link. Claims 27-32, 42 and 43 are objected to as being dependent upon a rejected base claim but would be allowable if rewritten in independent form.

The proposed amendment cancels claim 34, adds claim 46 and amends claims 27, 35, 39 and 42. New claim 46 is dependent to pending claim 39 and specifies that the lure include a metal body embedded within the frame. The proposed amendment is fully supported by the specification to the application and does not include any new matter. The new claim is not

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disclosed or described by the references cited in the Office Action but is patentably distinguishable over such prior art.

Applicant now turns to particular points raised by the Examiner in the Office Action of February 14, 2005.

Rejection of Claims 34-38 and Objection to Claims 27-32

Claims 34 and 35 were rejected under 35 U.S.C. §102(b) as anticipated by Ogle. Claims 36-38 are dependent to claim 35. Claim 34 has been canceled by Applicant's proposed amendment. Claim 35 has been amended to be dependent to claim 1 which had previously been allowed. Claims 35-38, as amended, are therefore now dependent upon an allowable base claim and withdrawal of their rejection is respectfully requested.

Claim 27 as also been amended to depend from claim 1. Claims 28-32 are dependent to claim 27. Claims 27-32, as amended, are thus also dependent upon an allowable base claim to overcome the pending objection and allowance of each claim is respectfully requested.

Rejection of Claim 39 under 35 U.S.C. §102(b)

Claim 39 was rejected as anticipated under 35 U.S.C. §102(b) by Ogle. Claims 40-46 are dependent to claim 39. An Office Action is required to designate as nearly as practicable the particular part of the reference relied upon when the reference shows or describes inventions other than that claimed by the Applicant. 37 CFR §1.104(c)(2). The rejection of claim 39 by the Examiner in the present Office Action fails to designate the particular portions of Ogle that anticipate each of the elements of the claim and, in particular, that anticipate the limitation that the upper and lower arms of the frame meet only at the frame-vertex. Applicant therefore asks that the final rejection of claim 39 be withdrawn and a new Office Action entered that is in accordance with 37 CFR §1.104.

Anticipation requires that the identical invention to that contained in a claim be described in a single prior art reference. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 9 USPQ 2d 1913

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(Fed. Cir. 1989). Claim 39, as amended, is directed to an improved spinnerbait lure having several structural features that are not disclosed by Ogle.

Claim 39 is directed to a spinnerbait lure comprising an integral, polymeric frame that has upper and lower arms extending divergently from a frame-vertex. The arms meet only at the frame-vertex and a fishing line/leader is attachable to the frame substantially adjacent to the frame-vertex. None of these features are shown by Ogle.

The frame in amended claim 39 is formed from an integral length of polymeric material. The lure in Ogle is comprised of a ring 12 and two extension arms 16, 19. The preferred embodiment is directed to a lure that has the loop and arms formed from a single piece of wire. An alternative embodiment is disclosed having polymeric material but only one where such material is used to make the elliptical ring 12. (Ogle at column 4, lines 20-27) There is no disclosure in Ogle of the arms being formed from plastic much less the entire frame, i.e., ring and extension arms, being made from a single piece of polymeric material.

In addition, Applicant's frame in amended claim 39 has upper and lower arms extending divergently from a frame-vertex. This is an additional feature not disclosed in Ogle since the two extension arms 16, 19 diverge from tapered tip 14 where either solder is applied, the wire is twisted, or fine wire is wrapped around the frame's wire to secure the ring 12 to itself. This point of divergence is not the frame-vertex of claim 39 as amended. A fishing line/leader is attachable with respect to Applicant's frame substantially adjacent to the frame-vertex. The apparent frame-vertex in Ogle (a feature proximate to 20a in FIG. 1 at a point of attachment with link 20) is on the opposite side of the ring from this tapered tip.

Absent these structural features, the lure described in amended claim 39 is not anticipated by Ogle. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). Applicant respectfully traverses the rejection under 35 U.S.C. §102(b) of independent claim 39 and requests that the rejection of claim 39, as well of claims 40-46 that depend from it, be withdrawn.

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Conclusion

Applicant's invention, as set forth in the amended claims, represents a highly novel spinnerbait lure. Applicant believes that claims 1-20, 27-33 and 35-46 include several structural features not disclosed or suggested in the prior art. With admission of the proposed amendment, Applicant submits that all rejections to claims 35-41 and 44-45 and objections to claims 27-32 and 42-43 in the Office Action have been traversed by amendment and argument, placing these claims in condition for allowance. Applicant respectfully requests therefore that the amendment above be allowed and that these rejections and objections be reconsidered and withdrawn by the Examiner. Early favorable action is earnestly solicited. The Examiner is invited to call the undersigned if such would be helpful in resolving any issue which might remain.

Respectfully submitted,



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